



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 2947-98
12 November 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: EMC, (SS [REDACTED] USN [REDACTED])
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 30 Mar 98 w/attachment
(2) Pers-832C memo dtd 11 May 98
(3) Pers-852 memo dtd 7 Aug 98
(4) NPC-311 memo dtd 13 Nov 98
(5) NPC-312 memo dtd 26 Jan 99
(6) NPC-852 memo dtd 8 Mar 99
(7) PERS-311 memo dtd 18 May 99
(8) PERS-852 memo dtd 10 Jun 99
(9) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the enlisted performance evaluation report for 1 October 1995 to 15 September 1996. A copy of this report is at Tab A to enclosure (1). He further requested removal of his nonjudicial punishment (NJP) of 21 February 1996, which has been set aside. The Board did not consider this request, since the NJP does not appear in his naval record. He also requested restoration of the forfeitures that were imposed at his NJP. The Board did not consider this request either, because it does not require Board action. Finally, he requested review of his lost advancement opportunity with actions as appropriate. As indicated in paragraph 3.h below, he has already received a special selection board and was considered, but not selected for advancement, without the NJP or the contested evaluation.

2. The Board, consisting of Messrs. Frankfurt, Ivins, and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 10 November 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (2), the Bureau of Naval Personnel Enlisted Performance Branch (Pers-832C) has commented to the effect that evidence of Petitioner's NJP, other than the contested evaluation, is not in his naval record.

c. In correspondence attached as enclosure (3), the Bureau of Naval Personnel Enlisted Advancements Branch (Pers-852) has commented to the effect that Petitioner should request a special selection board and, if selected, apply to this Board for a backdated advancement.

d. In correspondence attached as enclosure (4), the Navy Personnel Command (NPC) Performance Evaluation Branch (NPC-311) has commented to the effect that Petitioner's request to remove his enlisted performance evaluation report has merit and warrants favorable action, since the NJP to which it refers has been set aside.

e. In correspondence attached as enclosure (5), the NPC Information Assistance Branch (NPC-312) has advised that they are not responsible for removing, replacing or correcting performance evaluations. Accordingly, they recommended that NPC-311 take appropriate action.

f. In correspondence attached as enclosure (6), NPC-852, the NPC office which had issued enclosure (3), advised that the contested evaluation was removed from Petitioner's service record, and that he subsequently appeared before the Fiscal Year (FY) 1999 Senior Chief Petty Officer (SCPO) Special Selection Board, but was not selected for advancement.

g. In correspondence attached as enclosure (7), PERS-311, the NPC office which had issued enclosure (4), advised that the contested evaluation is still in Petitioner's naval record; that they do not have authority to remove an evaluation without Secretary of the Navy approval; and that they are unable to determine why enclosure (6) states the contested evaluation has been removed. They again stated that Petitioner's request to remove his contested evaluation has merit and warrants favorable action.


h. In correspondence attached as enclosure (8), PERS-852, the NPC office which had issued enclosures (3) and (6), clarified that when Petitioner was considered by the FY 1999 SCPO Special Selection Board, the recorder took action that caused the contested evaluation to be unavailable to the board, yet Petitioner was not selected for advancement.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (4) and (7), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following enlisted performance evaluation report and related material:

Date of Report	Reporting Senior	Period From	of Report To
24 Sep 96	 USN	1 Oct 95	15 Sep 96

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.


c. That appropriate corrections be made to the magnetic tape or microfilm maintained by NPC.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

2947-98

IN REPLY REFER TO

5420
Pers-832C
11 May 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS (BCNR)

Via: BUPERS/BCNR COORDINATOR, PERS-OOXCB

Subj: EMC(SS) [REDACTED], USN [REDACTED]

Encl: (1) BCNR File 02947-98
(2) Petitioner's Microfiche Record

1. The petition and naval records of subject petitioner have been reviewed relative to his request for removal of derogatory material and return of forfeitures.
2. The review indicates that the petitioner's former commanding officer set aside the NJP of 21 Feb 96. Therefore, favorable action on this petition is recommended.
3. No administrative action can be taken by this office since a copy of the Page 7 is not on file in the microfiche. This petition should be opened to Pers-311LL/322 for correcting the evaluation of 15 Sep 96 and to Pers-312G/1031D to restore forfeitures.

[REDACTED]
[REDACTED]
[REDACTED] d
Technical Advisor
to the Head, Enlisted
Performance Branch



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370-5000

IN REPLY REFER TO
1430
Ser 852
07 Aug 98

**MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS (BCNR)**

Via: Assistant for BCNR Matters (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
[REDACTED]

Ref: (a) BUPERSINST 1401.2

Encl: (1) BCNR file #02947-98

1. Enclosure (1) is returned recommending disapproval. With regard to reference (a), the proper avenue for redress at this time would be to submit a request for FY-99 E8/9 special selection board, and if selected, petition the Board for a backdated advancement.

[REDACTED]
LCPO, Enlisted Advancements
Branch



DEPARTMENT OF THE NAVY

BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2747-98

IN REPLY REFER TO

1610
NPC-311
13 NOV 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: NPC/BCNR Coordinator (NPC-00XCB)

Subj: EM [REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his fitness report for the period of 1 October 1995 to 15 September 1996.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. The report is signed by the member indicating his desire not to submit a statement. Per reference (a), Annex S, paragraph S-8, the member has two years from the ending date of the report to submit a statement if desired.

b. The member provides with his petition a letter dated 19 March 1998 from the Commanding Officer, [REDACTED] setting aside the member's Non Judicial Punishment (NJP) of 21 February 1996.

c. The fitness report for the period of 1 October 1995 to 15 September 1996 comments on the member's NJP. Per reference (a), Annex S, paragraph S-12, the comments contained in the original report are now inappropriate. As all the member's rights and privileges have been restored, we feel this report is inappropriate.

d. The member does prove the report to be unjust or in error.

Subj: EMC [REDACTED] USN, [REDACTED]

3. We recommend removal of the report in question, replacing the report with a no fault memo to maintain continuity.

[REDACTED]
Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2947-98

1000
NPC-312/13
26 JAN 1999

From: Commander, Navy Personnel Command
To: Executive Director, Board for Correction of Naval Records
Via: Assistant, Board for Correction of Naval Records (Pers-00Z)

Subj: ADVISORY OPINION In CASE OF
EMC(S [REDACTED], USN [REDACTED])

Ref: (a) BCNR ltr of 23 Nov 98

1. We have reviewed reference (a). The Information Assistance Branch is not responsible for removing, replacing, or correcting any official service record documents that pertain to fitness reports. We recommend NPC 311 take appropriate action.

[REDACTED]

By direction



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

2947-98
1430
Ser 852/064
8 Mar 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL
RECORDS (BCNR)

Via: NPC/BCNR Coordinator, NPC-00XCB

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
EMC(SS) [REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1401.2

Encl: (1) BCNR file #02947-98

1. EMC(SS) [REDACTED] record went before the FY99 Senior Chief Petty Officer Special Selection Board which convened 8 February 1999. The evaluation in question was removed from his service record and he was subsequently not selected for advancement before the special board. Had he been selected as a candidate, he would have been eligible to petition the board for a backdated advancement.

[REDACTED]
By direction



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2947-98

1610
PERS-311
18 MAY 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: EMC(SS) [REDACTED] Y, USN [REDACTED]

Ref: (a) BCNR ltr of 14 APR 99
(b) NPC-311 ltr of 13 NOV 98
(c) NPC-852 ltr of 8 MAR 99

Encl: (1) BCNR File

1. In response to reference (a), reference (b) remains unchanged.
2. Based on our review of the material provided, we find the following:

a. A further review of the member's record revealed the report for the period of 1 October 1995 to 15 September 1996 to be on file in the member's digitized record.

b. PERS-311 can not remove a report from a member's digitized record without the approval of the Secretary of the Navy.

c. We are unable to determine why reference (c) comments that the report in question was removed from the member's record.

3. In view of the above, we recommend the member's petition be forwarded to PERS-852 for additional comment.

4. As stated in reference (b), we recommend removal of the report in question, replacing the report with a Secretary of the Navy memo in order to maintain continuity.

[REDACTED]
Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

2947-98

1430
Ser 852/207
10 June 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL
RECORDS

Via: Assistant for BCNR Matter (PERS-00XCB)

Subj: COMMENTS AND RECOMMENDATIONS IN THE CASE OF
EMC(SS) [REDACTED] USN [REDACTED]

Encl: (1) Docket #02947-98

1. EMC(SS) [REDACTED]'s record went before the FY-99 Senior Chief Petty Officer Special Selection Board which convened 8 February 1999. The EMPRS Selection Board Module was set to a non-review setting by the board recorder, this feature made the evaluation in question unavailable to the board. Chief [REDACTED] was subsequently not selected for advancement before the special board. Had he been selected as a candidate, he would have been eligible to petition the board for a backdated advancement.

[REDACTED]
By direction [REDACTED]